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No. 78-1351

IN THE

# Supreme Court of the United States

October Term, 1978

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INDIANA & MICHIGAN ELECTRIC COMPANY, A CORPORATION,
*Petitioner,*

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
*Respondent.*

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## ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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## BRIEF IN OPPOSITION

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BERNARD KLEIMAN
1 East Wacker Drive
Suite 1910
Chicago, Ill. 60601
CARL FRANKEL
Five Gateway Center
Pittsburgh, Pa. 15222

MICHAEL H. GOTTESMAN
ROBERT M. WEINBERG
JEREMIAH A. COLLINS
Bredhoff, Gottesman,
Cohen & Weinberg
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

*Attorneys for Respondent*

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1. This case does not present the issue which petitioner Indiana & Michigan Electric Company asks this Court to consider.

Petitioner states that the "Question Presented" in this case is "[w]hether the Federal District Court has *jurisdiction* under . . . Section 301 . . . to entertain a suit to enforce an alleged labor agreement on behalf of *supervisors.*" Pet. at 2 (emphasis added). Petitioner argues that "the language of the statute is clear and unambiguous and plainly demonstrates that Section 301 does not confer jurisdiction when the *sole issue* involves the rights and obligations of *supervisors* and their employers under an alleged collective bargaining agreement." Pet. at 12 (emphasis added). But as the findings of the district court make clear, the agreement sought to be enforced here covers non-supervisory employees (*i.e.*, persons who are "employees" for all purposes under the Act) as well as supervisors.

The pertinent findings of the district court are these. Petitioner had for some years voluntarily recognized Local 14259 of the United Steelworkers of America, AFL-CIO-CLC (hereinafter "the Union"), as the bargaining representative of a "group of supervisory *and non-supervisory* personnel totaling 91 employees, 53 of which are master-pilots and pilots (supervisory) and 38 of which are classified as chief engineers or engineer-deckhands (non-supervisory)." Pet. App. at 5a (emphasis added). On December 14, 1976, petitioner submitted to the Union a written offer of terms for a new collective bargaining agreement, again covering both supervisory and non-supervisory employees, to succeed the agreement about to expire. *Id.* The Union accepted the offer. *Id.* Petitioner then sought to escape its agreement, claiming that its offer had been conditional—the condition being that another local, representing other employees of petitioner, accept the terms of a separate contract offer which had been made to it by petitioner—and, the condition not having been met, that no contract existed. *Id.* at 6a. The Union filed suit in federal district court seeking an injunction directing petitioner to comply with the contract. The court, basing its jurisdiction upon § 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. § 185, found that petitioner's offer was not conditional and that, therefore, "a valid and enforceable collective bargaining agreement was formed" by the Union's acceptance of the offer. *Id.* at 6a-7a, 10a-11a. Accordingly, the court directed petitioner "to comply with the provisions of said Collective Bargaining Agreement." *Id.* at 11a.

The Sixth Circuit affirmed, declaring that the district court's finding that the offer had been unconditional was not clearly erroneous, and that petitioner "was rightly ordered to comply with the terms and conditions of the December 14, 1976 collective bargaining agreement." *Id* at 3a. Both courts rejected petitioner's argument that they were without jurisdiction under § 301 to enforce the agreement.



Whatever the merit of the issue petitioner asks this Court to review—whether § 301 confers jurisdiction to enforce agreements between employers and their supervisors—it is not presented by this case. As the district court accurately found, the contract the Union sought to enforce covers non-supervisory employees—"employees" within the meaning of § 2(3) of the Act, 29 U.S.C. § 152(3)—as well as supervisors. Section 301(a) provides, in pertinent part, that "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce" may be brought in federal district court. Petitioner argues that the term "employees" as used in § 301 has the same meaning as under §§ 7, 8 and 9 of the Act (*i.e.*, that it does not include supervisors), and thus that a labor organization representing only supervisors does not come within the terms of § 301; as petitioner puts it, "[t]he key question raised by this section is whether a supervisor is an 'employee' so that suit by a labor organization representing supervisors is a suit between 'an employer and a labor organization representing employees.'" Pet. at 12. But regardless of whether supervisors are "employees," the non-supervisory personnel covered by the contract in this case are "employees"; the terms of § 301 are therefore met even if, *arguendo*, petitioner's analysis of the statutory language were correct. Without doubt, § 301 provides jurisdiction for a suit by a "labor organization representing employees" against an "employer" to secure enforcement of a contract covering the terms and conditions of "employees" of the employer.

While the facts of this case do not present the jurisdictional question which petitioner asks this Court to decide, those facts suggest a different question—one of remedy—which petitioner does *not* ask this Court to decide: whether a federal district court which has jurisdiction over a suit to enforce a collective bargaining agreement under § 301 (because the agreement covers non-supervisory employees)

must limit its enforcement order so as not to enforce the rights of supervisors established in that agreement. Petitioner never sought such a limitation upon relief below—its argument was that the district court could not entertain the action *at all*—and neither court addressed the question. Such a defense, accordingly, has been waived. Moreover, even if the defense had not been waived, it is not of sufficient practical importance to merit this Court's attention: to our knowledge, this is the first case in the 32-year history of § 301 deciding the application of that section to an agreement covering both non-supervisory and supervisory employees.[1]

2. Even if this case presented the question which petitioner asks this Court to decide—the applicability of § 301 to agreements covering only supervisors—it would not be worthy of this Court's attention. That issue has arisen in only a handful of cases since § 301 was enacted, and the lower courts uniformly have concluded that § 301 *does* cover such agreements. *National Marine Engineers' Beneficial Association* v. *Globe Seaways, Inc.*, 451 F.2d 1159, 1160, n. 1 (2nd Cir. 1971)[2]; *Dente* v. *International Organization of Masters, Mates and Pilots*, 492 F.2d 10 (9th Cir. 1973); *District 2, Marine Engineers Beneficial Association* v. *AMOCO Oil Company*, 554 F.2d 774 (6th Cir. 1977); *Isbrandtsen Co.* v. *District 2, Marine Engineers Ben. Ass'n.*, 256 F.Supp. 68 (E.D. N.Y. 1966).

[1] Furthermore, even if petitioner had raised the question and prevailed, the district court would have had pendant jurisdiction to enforce the contract on behalf of supervisors pursuant to the common law. As we show below, at pp. 5-6, nothing in federal labor law precludes an employer from voluntarily entering into a collective bargaining agreement covering its supervisors, or a State from enforcing such an agreement.

[2] An earlier decision of the Second Circuit contained a *dictum* which could be construed as indicating that § 301 is inapplicable to supervisor agreements. *A. H. Bull Steamship Co.* v. *National Marine Eng. B. Ass'n.*, 250 F.2d 332, 335-337 (2nd Cir. 1957). However, the Second Circuit has subsequently repudiated that *dictum*. *Globe Seaways, supra*, 451 F.2d at 1160, n. 1.



Contrary to petitioner's assertion, there is no conflict on the issue. The lone case cited by petitioner in support of that assertion is *International Organization of Masters, M. & P.* v. *NLRB*, 351 F.2d 771 (D.C. Cir. 1965). But that case involved the meaning of § 8(b)(4) of the Act, not § 301; while the court declared in *dictum* that it "may well be" that agreements covering supervisors are not within the ambit of § 301, the court did not purport to decide that issue for "the construction of section 301 has no necessary bearing on the present question whether MMP may be liable as a 'labor organization' [under § 8(b)(4)]." 351 F.2d. at 775.

The cases which *have* decided the § 301 issue uniformly have concluded that when Congress amended the definition of "employees" to exclude supervisors in 1947, it intended that new definition to apply only to Title I of the 1947 Act (which reenacted, with amendments, the NLRA of 1935), and did not intend to exclude supervisors from the definition of "employees" in the succeeding Titles which were being newly added in 1947. This finding of legislative intent emerges clearly from a reading of the legislative history of the 1947 Act, most extensively detailed in Judge Friendly's opinion in *United States* v. *National Marine Engineers Ben. Ass'n.*, 294 F.2d 385, 390-393 (2nd Cir. 1961) and in Judge Zavatt's opinion in *Isbrandtsen, supra*, 256 F.Supp. at 71-77. Indeed, this construction of the statute has been uniformly applied not only to Title III of the 1947 Act (which contains § 301), but also to Title II, thus making the national emergency injunction provisions applicable to strikes by supervisory unions. *United States* v. *National Marine Engineers, supra.*

Petitioner's reliance on this Court's decision in *Beasley* v. *North Carolina*, 416 U.S. 653 (1974), is misplaced. There the Court decided that § 14(a) of the Act was meant to preclude enforcement of state laws which serve to *compel*

employers to treat supervisors as employees for purposes of bargaining and entering into contracts. The Court found that such enforcement would "flout the national policy against compulsion upon employers from either federal or state agencies to treat supervisors as employees." 416 U.S. at 662. But the instant case does not involve any compulsion on the employer to recognize or bargain with a union or to enter any agreement with it. Petitioner did all those things voluntarily. Thus here, even if the agreement had covered only supervisors, the question would be whether the agreement which petitioner voluntarily consummated can be enforced. The *Beasley* Court quoted the legislative history of the 1947 Act indicating that the bill:

> "does not forbid any employer to recognize a union of foremen. Employers who, in the past, have bargained collectively with supervisors may continue to do so."

H.R. Rep. No. 245, 80th Cong., 1st Sess., 17 (1947), quoted at 416 U.S. at 661. There was a congressional decision in 1947 to insulate employers from the compulsion of recognizing and bargaining with supervisory unions. There was no congressional concern with employers voluntarily doing so, and nothing from which to infer a congressional disinclination to permit enforcement of agreements voluntarily made.

## CONCLUSION

For the reasons set forth above, the petition for writ of certiorari should be denied.

Respectfully submitted,

BERNARD KLEIMAN
1 East Wacker Drive
Suite 1910
Chicago, Ill. 60601
CARL FRANKEL
Five Gateway Center
Pittsburgh, Pa. 15222

MICHAEL H. GOTTESMAN
ROBERT M. WEINBERG
JEREMIAH A. COLLINS
Bredhoff, Gottesman,
Cohen & Weinberg
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

*Attorneys for Respondent*